IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5741 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5741 of 2004

MR JT TRIVEDI for Petitioner No. 1

MR BJ TRIVEDI for Petitioner No. 1

MS JIGNASA B TRIVEDI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2 & 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/12/2004

ORAL JUDGEMENT

Rule. Learned AGP Ms Joshi waives service of rule on behalf of respondent No.1. Learned advocate Mr.J.B.Pardiwala waives service of rule on behalf of respondent Nos.2 & 3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 8th April 2004 passed by the respondent No.2 by which certain recovery was sought to be made from the petitioner on account of alleged overpayment of salary. The petitioner has raised number of contentions, including the contention that the impugned order was passed without affording an opportunity of being heard to the petitioner. It was also contended that the respondent No.2 was not the competent authority who could have even otherwise passed the order of recovery. It is also contended that no recovery could have been made from the petitioner on the grounds on which the recovery is sought to be made.

3. Without going into the validity of other contentions and without expressing any opinion on the same, I find that the petitioner is justified in complaining that the impugned order which apparently results into adverse civil consequence was passed without giving an opportunity of being heard to the petitioner. Only on this ground, I am inclined to set aside the impugned order dated 8th April 2004. It will be open for the authorities to take appropriate steps in accordance with law after giving an opportunity of being heard to the petitioner. If a show cause notice is issued to the petitioner seeking recovery of the alleged excess payment, it will be open for the petitioner to raise all contentions as may be available to him and the authority shall decide the same in accordance with law.

4. With the above observations and directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)
(vjn)